

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ARTHUR F. SCHNEIDER,)
)
Appellant,)
)
vs.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)

PCHB No. 212

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the request for review of respondent's denial to appellant of a flood control zone permit, came before two members of the Pollution Control Hearings Board (James T. Sheehy and Walt Woodward) at an informal hearing in the Yakima County Courthouse, Yakima, at 10:30 a.m., March 2, 1973.

Appellant appeared through Douglas D. Peters, respondent through Wick Dufford, Assistant Attorney General.

Witnesses were sworn and testified. Exhibits were offered and admitted. Counsel filed briefs.

1 On the basis of testimony heard, exhibits examined and Exceptions
2 of appellant, the Pollution Control Hearings Board makes and enters
3 the following:

4 FINDINGS OF FACT

5 I.

6 Appellant has under option 0.93 acre of land about 300 feet from
7 the west bank of the Yakima River adjacent to the Elks Golf Club Course
8 in Selah, Yakima County. Wishing to construct a 12 unit condominium
9 for permanent habitation by 24 persons on the property, appellant
10 obtained a Shoreline Management Act development permit and a building
11 permit from the City of Selah, but the building permit was subject to
12 approval by the State of Washington, Department of Ecology because the
13 land is situated within Yakima Flood Control Zone No. 9. Appellant
14 filed Flood Control Zone Application 3-1283-9 with respondent on May 25,
15 1972. On October 3, 1972 respondent denied the application. That denial
16 is the subject of this appeal.

17 II.

18 In 1966, in connection with the construction of a freeway, the
19 bed of the Yakima River was moved about 160 feet west in the vicinity
20 of appellant's optioned property and riprap to the height of the old
21 river bank was placed along the river's new west bank. The freeway,
22 situated at the toe of a steep hill, forms the east bank.

23 III.

24 The Yakima River has had a long and consistent history of flooding
25 in the area of concern in this matter. In one of the valley's most
26 serious floods in 1948, flood waters covered appellant's optioned land.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 Since the rechanneling of the river in 1966, there has been no flood
2 damage to structures built near appellant's optioned site. However, a
3 flash flood caused by an ice jam in the winter of 1972, resulted in
4 flood water reaching within one foot of appellant's optioned land.

5 IV.

6 Respondent relies on the United States Army Corps of Engineers for
7 flood hazard information and evaluation, either from published project
8 study reports where suggested floodway and floodway fringe limit lines
9 are drawn on area maps or, in areas where such studies have not been
10 published, by direct contact with the Corps. Such a study is being
11 made of the area involving this matter, but it is not expected to be
12 concluded until June, 1973.

13 V.

14 In the instant matter, respondent on July 19, 1972, requested the
15 Seattle District, Corps of Engineers, to make a flood hazard evaluation
16 of appellant's condominium proposal. On July 29, 1972, the Corps
17 noted that the 1948 flood (estimated by the Corps to have a 20-year
18 recurrence interval) inundated the proposed condominium site to a
19 depth of six feet and declared the appellant's optioned land to be
20 "within the floodway boundaries."

21 VI.

22 Washington Administrative Code, Chapter 508-60-040 limits
23 structures in a floodway to those not for human habitation of a
24 permanent nature.

25 VII.

26 Citing the Corps' evaluation and WAC 508-60-040, respondent on

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 August 25, 1972 informed appellant that Flood Zone Control Application
2 3-1283-9 could not be granted. Formal denial was made by respondent
3 on October 3, 1972.

4 VIII.

5 Of the flood control zone permits issued since 1966 by the State
6 of Washington, Department of Ecology or its predecessor agencies in
7 Yakima Flood Control Zone No. 9 north from the Selah Bridge in the area
8 of concern in this matter, appellant's application is the only one
9 wherein the Corps of Engineers is on written record stating the
10 property is "within the floodway boundaries."

11 From these Findings, the Pollution Control Hearings Board comes
2 to these

13 CONCLUSIONS

14 I.

15 Respondent, in denying appellant's application, relied on the
16 flood hazard evaluation of the United States Corps of Army Engineers.
17 From appellant's standpoint, it is most regretable that the in depth
18 study being made of the Yakima River north from the mouth of the Naches
19 River will not be completed until June, 1973.

20 In the meantime, however, the Corps, using available information
21 at hand, declared in writing that appellant's proposed condominium
22 site is "within the floodway boundaries."

23 II.

24 That statement left respondent constrained by the provisions of
5 WAC 508-60-040. In relying on the Corps' evaluation and in being
26 mindful of the WAC constraint, respondent was not being arbitrary or

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 capricious.

2 III.

3 Appellant contends that the Yakima is a "different" river in the
4 area of his proposed condominium since the major rechanneling in 1966.
5 It very well may be. But this Board does not have the expertise to
6 guarantee that tomorrow a major flood will not cause property damage
7 and loss of human life in that area.

8 Therefore, the Pollution Control Hearings Board makes this

9 ORDER

10 Respondent's denial of Flood Control Zone Application 3-1283-9
11 is sustained.

12 DONE at Lacey, Washington this 6th day of June, 1973.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

16 James T. Sheehy
17 JAMES T. SHEEHY, Member

18 NOTE: Mr. W. A. Gissberg, a member of this Board, did not participate
19 in this matter.

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER